IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRL.A.No. 715 of 1998()

CC.510/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR. Dtd.31.3.1998.

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APPELLANT: COMPLAINANT

PADINHARE VEETTIL MADHAVAN,
S/O.M..NARAYANAN, AGED 34 YEARS,
CHARUTHAZHAM AMSOM DESOM,
P.O.MANDOOR.

BY ADV. SRI.V.RAJGOPAL

RESPONDENTS: ACCUSED

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1. **P.V.PADMANABHAN,S/O.M.V.NARAYANAN,**
   CHARUTHAZHAM AMSOM DESOM,
   P.O.MANDOOR.

2. **PADINHARE VEETTIL SREEDHARAN,**
   S/O.PARVATHI, -DO- -DO-

3. **C.AMBUJAKSHI, S/O.JAANESWARAN, MATHERY -DO- -DO**

4. **STATE OF KERAL REP.BY PUBLIC PROSECUTOR**
   HIGH COURT , ERNAKULAM.

BY ADV. SRI.P.V.MOHANAN
PUBLIC PROSECUTOR SRI.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

CRL.APPEAL.NO.715 OF 1998 ()

Dated this the 24th day of January, 2007

J U D G M E N T

The petitioner was the complainant in C.C.No.510/1994 on the file of the Judicial First Class Magistrate, Payyannur. A private complaint was filed by the appellant alleging that 1st and 2nd accused (1st and 2nd respondents) who are brothers induced the complainant assuring that he will be given job visa on payment of Rs.70,000/-, part of the money having been paid to the 3rd accused by demand drafts as directed by the accused. But even though a visa was given, that was found to be a forged visa. Thereby the accused has committed offence under Sections 420 and 465 of the Indian Penal Code. Court below after consideration of the entire evidence found that the main case is based on issuance of forged visa. The above visa itself was not produced and no evidence was adduced to show that it was forged one. Exts.P1 and P2 letters were produced to show that letters were given by A1. But those letters were also

not proved to be in the handwriting of A1. A1 denied the ownership of the above letters. Court below also found that there was no independent witness to prove that accused 1 to 3 have conversation with PW1 and they have assured PW1 to give a visa. Court below also found that Ext.P3 receipt will not show that he has taken draft cannot be accepted as it is not the usual receipt issued by the Bank. The trial court found as follows:

> "The defence did not admit the letters produced on the side of the prosecution as those which were sent by A1 to PW1. There is no evidence as to reveal that PW1 could identify the handwriting of A1 and thus connect the authorship of the letters with A1. No efforts were made on the side of the prosecution as to establish that the letters relied by prosecution are those which were sent by A1. In the circumstance, the letters allegedly sent by A1 as such could not be found to those which were sent by the accused to PW1. Ext.P3 said to be the receipt for issue of demand draft does not contain any seal or authentication on it as to show that it is one issued from the bank in the natural course of business. The

> copy of the viza allegedly given by A1 to PW1 is not produced before the Court. PW1 himself said that he had submitted the said copy of viza to the bank. Though the prosecution has relied upon the documents as to suggest that the accused had promised him viza the authorship of said documents. Further, PW1 is not at all consistent about the assurance made by A2 and 3 as alleged in the complaint. There are no witnesses forthcoming on the side of the prosecution as to speak that accused 1 to 3 had talks with PW1 and that they had assured PW1 to provide viza. Further, the very document alleged to be a forged one is not brought before Court. The evidence of PWs.2 to 4 will not help to appropriate the version of PW1 for the reason that these witnesses had only hearsay knowledge regarding the incident. In the circumstances, I find that the prosecution could not bring in sufficient and satisfactory evidence as to prove its case against the accused."

Considering the evidence adduced in this case, I am of the view that the view taken by the trial court is a possible one and it is not patently illegal or perverse. In the above

circumstances, I see no ground to interfere in the order of acquittal passed by the trial court and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.715 OF 1998 (B)

JUDGMENT

24th Janurary, 2007